

LEXTRON SYSTEMS, INC,
Plaintiff,

v
MICROSOFT CORP,
Defendant.

No C-04-0588 VRW

ORDER

The patent-in-suit in this infringement action is United States Patent No 5,794,259, which discloses an "apparatus and methods to enhance web browsing on the internet." The invention is in the field of web browser technology, and, more particularly, "tools for filling in forms" on web pages. Patent at 1:5-8. The court held a claim construction hearing on May 25, 2005, pursuant to Markman v Westview Instruments, Inc, 517 US 370 (1996). Based on the hearing, the parties' memoranda and the applicable Federal Circuit law, the court construes the claims of the patent as follows.

I

The patent itself concisely explains its purpose and background:

Often when browsing the [web], one encounters forms to fill out, mostly for buying or subscribing to services or products. these forms are often long, asking for lots of information, and tedious to fill out.

* * *

What is needed * * * is a system that allows a user to link specific pre-stored data, usually data unique to the user, with fields in forms encountered on the Internet, such that a pipeline is established for quickly and efficiently filling fields in forms.

Patent at 1:13-16, 45-50.

The patent describes such a system involving four types of entities: fields, field names, stored fill entities and tags. Although the court will have occasion below to construe some of these terms more precisely, a rough description of these four entities and how they interact will serve to frame the context of the patent. "Fields" are the familiar blank spaces to be filled in on web pages. Each field has a "field name"; this field name is internal to the web page code and is not seen by the user. A field name is different from a "field label," which is typically text visible to the user that is placed near the field to identify the purpose of the field to the user. "Stored fill entities" are pieces of text or data that have been stored on the computer with a view toward entering them in a field on a web page. Each stored fill entity is identified in the computer by a "tag" that describes the content of the stored fill entity. When a form is encountered in browsing the web and the system described by the patent is

1 activated, the system compares the field names with the tags, and
2 if a match is found, it associates the stored fill entity having
3 the matching tag with the field having the matching field name. By
4 way of a concrete example, consider a field for a user to enter his
5 surname. The field name for the field might be "LastName." If the
6 user, Mr Jones, has created a stored fill entity "Jones" with the
7 tag "LastName," then the system can automatically associate "Jones"
8 with the surname field on the form.

9 What it means for a tag and a field name to "match" and
10 what it means to "associate" a stored fill entity with a field are
11 matters the parties hotly dispute. To these questions, and the
12 construction of other terms of the patent, the court now turns.

13 II

14 The construction of patent claims is a question of law to
15 be determined by the court. Markman v Westview Instruments, Inc,
16 517 US 370 (1996). The goal of claim construction is "to interpret
17 what the patentee meant by a particular term or phrase in a claim."
18 Renishaw PLC v Marposs SpA, 158 F3d 1243, 1249 (Fed Cir 1998). In
19 determining what a patentee meant by a term or phrase, the court
20 looks first to the claim itself.

21 The claims of the patent provide the concise
22 formal definition of the invention. They are
23 the numbered paragraphs which "particularly
24 [point] out and distinctly [claim] the subject
25 matter which the applicant regards as his
26 invention." 35 USC § 112. It is to these
27 wordings that one must look to determine
28 whether there has been infringement. Courts
can neither broaden nor narrow the claims to
give the patentee something different than what
he has set forth. No matter how great the
temptations of fairness or policy making,
courts do not rework claims. They only

1 interpret them.

2 EI Du Pont de Nemours & Co v Phillips Petroleum Co, 849 F2d 1430,
3 1433 (Fed Cir 1988).

4 "The claims define the scope of the right to exclude; the
5 claim construction inquiry, therefore, begins and ends in all cases
6 with the actual words of the claim." Renishaw, 158 F3d at 1248.

7 "The words used in the claim are viewed through the viewing glass
8 of a person skilled in the art." Brookhill-Wilk 1, LLC v Intuitive
9 Surgical, Inc, 326 F3d 1215, 1220 (Fed Cir 2003) (citing Tegal Corp
10 v Tokyo Electron Am, Inc, 257 F3d 1331, 1342 (Fed Cir 2001)).

11 "Absent a special and particular definition created by the patent
12 applicant, terms in a claim are to be given their ordinary and
13 accustomed meaning." York Prods, Inc v Central Tractor Farm &
14 Family Ctr, 99 F3d 1568, 1572 (Fed Cir 1996). The court may, if
15 necessary, consult a variety of sources to determine the ordinary
16 and customary meaning of a claim term, including the claim terms
17 themselves, dictionaries, the written description, the drawings and
18 the prosecution history, if in evidence. Brookhill-Wilk 1, 326 F3d
19 at 1220. "Such intrinsic evidence is the most significant source
20 of legally operative meaning of disputed claim language."

21 Vitronics Corp v Conceptronic, Inc, 90 F3d 1576, 1582 (Fed Cir
22 1996). With respect to dictionary definitions, "[i]f more than one
23 dictionary definition is consistent with the use of the words in
24 the intrinsic record, the claim terms may be construed to encompass
25 all such consistent meanings." Texas Digital Systems, Inc v
26 Telegenix, Inc, 308 F3d 1193, 1203 (Fed Cir 2002).

27 The court begins its construction of claim terms by
28 consulting intrinsic evidence of the meaning of disputed claim

1 terms, which includes the claims, the specification and the
2 prosecution history (if in evidence). Lacks Industries, Inc v
3 McKechnie Vehicle Components USA, Inc, 322 F3d 1335, 1341 (Fed Cir
4 2003) (citation omitted). "If upon examination of this intrinsic
5 evidence the meaning of the claim language is sufficiently clear,
6 resort to 'extrinsic' evidence, such as treatises and technical
7 references, as well as expert testimony when appropriate, should
8 not be necessary." Digital Biometrics, Inc, v Identix, Inc, 149
9 F3d 1335, 1344 (Fed Cir 1998). "[I]f after consideration of the
10 intrinsic evidence, there remains doubt as to the exact meaning of
11 the claim terms, consideration of extrinsic evidence may be
12 necessary to determine the proper construction." Id.

13 "[A] court may constrict the ordinary meaning of a claim
14 term in * * * one of four ways[:]" (1) "if the patentee acted as
15 his own lexicographer and clearly set forth a definition of the
16 disputed claim in either the specification or prosecution history;"
17 (2) if the intrinsic evidence shows that the patentee distinguished
18 the term from prior art on the basis of a particular embodiment,
19 expressly disclaimed subject matter, or described a particular
20 embodiment as important to the invention; (3) "if the term chosen
21 by the patentee so deprives the claim of clarity as to require
22 resort to other intrinsic evidence for a definite meaning; and (4)
23 "if the patentee phrased the claim in step- or means-plus-function
24 format," then "a claim term will cover nothing more than the
25 corresponding structure or step disclosed in the specification, as
26 well as equivalents thereto * * *." CCS Fitness, Inc v Brunswick
27 Corp, 288 F3d 1359, 1366-67 (Fed Cir 2002) (internal citations and
28 quotation marks omitted).

1 Limitations from the specification, such as from the
2 preferred embodiment, cannot be read into the claims absent an
3 express intention to do so. Teleflex, Inc v Ficosa North Am Corp,
4 299 F3d 1313, 1326 (Fed Cir 2002) ("The claims must be read in view
5 of the specification, but limitations from the specification are
6 not to be read into the claims."). But "a construction that
7 excludes a preferred embodiment 'is rarely, if ever, correct.'" C R Bard, Inc v United States Surgical Corp, 388 F3d 858, 865 (Fed
8 Cir 2004) (citing Vitronics, 90 F3d at 1583).

10 With these legal principles in mind, the court now turns
11 to the construction of the disputed claim language of the patent.

13 III

14 Independent claims 1 and 4 are at issue. The disputed
15 terms in these claims overlap significantly. Accordingly, except
16 where noted, the court construes like terms in the same manner. As
17 much of the claim language is in dispute, the court simply
18 rescribes the claims here and will identify the precise terms in
19 dispute as it construes them in turn.

- 20 1. A system for providing data for fields having coded
21 field names in forms downloaded as code from a
server on the Internet, comprising:

22 a central processing unit (CPU);

23 a display operable by the CPU;

24 stored fill entities associated with
25 tags accessible by the CPU; and

26 control code executable by the CPU;

27 wherein the CPU, executing the
28 control code, compares the coded
field names in the downloaded code
with the tags associated with the

1 stored fill entities, retrieves fill
2 entities when a match is made, and
3 associates retrieved fill entities
4 with fields wherein the tags match
the field names, preparatory to
transmission to the server on the
Internet.

5 * * *

6 4. A method incorporating a computer having a display
7 screen, the method for providing data for forms
8 having fields with coded field names downloaded as
code from a server on the Internet comprising steps
of:

9 (a) associating fill entities with
10 tags;

11 (b) storing the fill entities
associated with the tags in a memory
12 of the computer;

13 (c) downloading a form as code from a
server on the Internet through a
14 browser using the computer;

15 (d) associating the tags of the
stored fill entities with coded field
16 names in the code of the downloaded
form; and

17 (e) causing the stored fill entities
with tags matching coded field names
18 in the code of the downloaded form to
be associated with the coded fields
19 to which the tags match.

20 Patent at 5:11-6:31.

21
22 A

23 Before turning to the actual claim language, a comment on
24 the structure of claim 1 is in order. Although the bulk of the
25 claim describes steps, the claimed subject matter is a "system."
26 But this claim is neither a method claim nor a means-plus-function
27 claim. Rather it is an apparatus -- a "machine" under 35 USC § 101
28 -- specifically, a computer system.

Claim 1 is not a method claim, most obviously because it does not use the word "method." Furthermore, claim 1 describes a "system" that "compris[es]" several structural components (viz, a CPU, a display, "stored fill entities associated with tags" and "control code"). The stepwise functional language of claim 1 ("wherein the CPU * * * compares * * *, retrieves * * *, and associates * * *") is simply a limitation, and functional limitations are a proper way of limiting apparatus claims. See, e g, K-2 Corp v Saloman SA, 191 F3d 1356, 1363 (Fed Cir 1999).

Nor is claim 1 drafted in means-plus-function form pursuant to 35 USC § 112, ¶6. True, claim 1 is "a system for providing," and "system" can be a synonym for "means." Nonetheless,

"a claim term that does not use 'means' will trigger the rebuttable presumption that § 112 ¶ 6 does not apply." CCS Fitness, Inc v Brunswick Corp, 288 F3d 1359, 1369 (Fed Cir 2002). The use of the term "means" is "central to the analysis," Personalized Media Communications, LLC v Int'l Trade Comm'n, 161 F3d 696, 703 (Fed Cir 1998), because the term "means," particularly as used in the phrase "means for," is "part of the classic template for functional claim elements," Sage Prods, Inc v Devon Indus, Inc, 126 F3d 1420, 1427 (Fed Cir 1997), and has come to be closely associated with means-plus-function claiming. See Apex, Inc v Raritan Computer, Inc, 325 F3d 1364, 1373 (Fed Cir 2003); York Prods, Inc v Cent Tractor Farm & Family Ctr, 99 F3d 1568, 1574 (Fed Cir 1996).

The presumption that a limitation lacking the term "means" is not subject to section 112 ¶ 6 can be overcome if it is demonstrated that "the claim term fails to 'recite sufficiently definite structure' or else recites 'function without reciting sufficient structure for performing that function.'" CCS Fitness, 288 F3d at 1369 (quoting Watts v XL Sys, Inc, 232 F3d 877, 880 (Fed Cir 2000)). Our cases make clear, however, that the presumption flowing

1 from the absence of the term "means" is a
2 strong one that is not readily overcome. See,
3 e g, Al-Site Corp v VSI Int'l, Inc, 174 F3d
1308, 1318-19 (Fed Cir 1999); Personalized
Media Communications, 161 F 3d at 703-05.

4 Lighting World, Inc v Birchwood Lighting, Inc, 382 F3d 1354, 1358
5 (Fed Cir 2004).

6 Claim 1 recites sufficient structure to remove the
7 possibility that "system" is actually "means" in disguise. As
8 noted above, claim 1 describes a CPU, a display, control code and
9 more. The presumption against reading claim 1 under § 112, ¶6
10 remains un rebutted.

11 Accordingly, the court regards claim 1 as an apparatus
12 claim.

13
14 B

15 Turning to specific aspects of the claim language, the
16 court will construe disputed terms in the order in which they
17 appear in the claims.

18
19 "providing data"

20 Defendant contends that "providing data" means that the
21 system places data in fields on a form; plaintiff offers the more
22 expansive construction of "making data available." Plaintiff's
23 construction appears to accord with the dictionary definition of
24 "provide." By contrast, defendant offers several reasons for its
25 construction, none of which persuades.

26 First, defendant offers a lengthy logical chain beginning
27 with step (d) of claim 4:

- 28 1. Step (d) associates fill entities with fields by

1 virtue of the association between tags and field
2 names.

3 2. Step (e) must require something more than step (d).

4 3. Hence, "associates" in step (e) must refer to
5 something more than "associates" in step (d).

6 4. "Associates" in step (e) must mean "places retrieved
7 fill entities into fields."

8 5. Step (e) is a step of claim 4.

9 6. Hence, claim 4 includes placing retrieved fill
10 entities into field.

11 7. Hence "providing" in the preamble of claim 4 must
12 mean "placing data into fields on a form."

13 8. "Providing" in claim 1 must have the same meaning as
14 "providing in claim 4."

15 9. Hence, "providing" in claim 1 must mean "placing
16 data in fields on a form."

17 There are several steps in this chain with which plaintiff takes
18 issue. But for present purposes, it suffices to note that the
19 inferential chain fails at the very first step: Stripped to its
20 grammatical bones, step (d) describes associating "tags * * * with
21 coded field names." Step (e) describes associating "stored fill
22 entities * * * with * * * coded fields." Step (d) may imply to a
23 human being that an association between a tag and a field name
24 implies an association between the corresponding stored fill entity
25 and field. But the patent is directed at computer processing, and
26 a computer would necessarily need separate instructions to achieve
27 both step (d) and step (e).

28 Second, defendant argues that plaintiff's proposed
construction would render the claim "hopelessly indefinite" and
invalid under 35 USC § 112, ¶2. Although "where there is an equal
choice between a broader and a narrower meaning of a claim," and

1 the narrower meaning will save the claim from invalidity, the
2 narrower construction is preferred, see Athletic Alternatives v
3 Prince Manufacturing, Inc, 73 F3d 1573, 1581 (Fed Cir 1996), there
4 is no "equal choice" here. Rather, the usual principle of claim
5 construction applies: Courts are not to ignore the plain meaning
6 of claim language in an attempt to save the claim from invalidity.
7 See, e g, EI Du Pont de Nemours & Co v Phillips Petroleum Co, 849
8 F2d 1430, 1433 (Fed Cir 1988).

9 Third, defendant argues that "the specification
10 considered filling in forms to be the invention. * * * The fact
11 that the text of the patent consistently refers to 'the invention'
12 as a system that fills in fields 'suggests that the very character
13 of the invention requires the limitation be a part of every
14 embodiment' because nothing else is disclosed." Def Br (Doc #64)
15 at 12:23, 13:14-16 (quoting Alloc, Inc v ITC, 342 F3d 1361, 1370
16 (Fed Cir 2003)). But the "very character of the invention" is not
17 actual filling of fields, but rather the automation of part of that
18 task. Filling in fields is merely a limitation in a preferred
19 embodiment disclosed in the specification. As such, defendant's
20 argument appears to run afoul of the principle that "limitations
21 from the specification, such as from the preferred embodiment,
22 cannot be read into the claims absent an express intention to do
23 so." Teleflex, 299 F3d at 1326.

24 Moreover, the specification contemplates "activat[ing]" a
25 "bubble" with possible choices for stored fill entities. See
26 Patent at 4:15-25 & fig 2. Claim 2, which more specifically claims
27 such a bubble-based system, speaks of "fill[ing] the field," while
28 there is no mention of field-filling in claim 1.

1 Finally, defendant argues that the patent prosecution
2 history establishes that "providing" is limited to filling in
3 fields. It is true that claim 1 originally referred to a "system
4 for filling fields" and was amended to describe a "system for
5 providing data for fields." See Def Br (Doc #64) Ex K (amendment).
6 And it is also true that, even after amendment, the patentee
7 referred to the invention as one for filling in forms. See, e g,
8 id at 6 (referring to "automated filling of forms as taught in
9 Applicant's invention"). The issue is close. On the one hand, the
10 file history supports defendant's position because it discusses the
11 invention in terms of filling in fields. On the other hand, the
12 amendment to the actual claim language squarely supports
13 plaintiff's position. Indeed, to accept defendant's position would
14 require the court to read the amendment out of the claim, something
15 the court cannot do. "[T]he claim construction inquiry * * *
16 begins and ends in all cases with the actual words of the claim."
17 Renishaw, 158 F3d at 1248.

18 Accordingly, the court construes "providing data" as
19 "making data available."

20
21 "coded field names"

22 Defendant contends simply that the coded field names are
23 the names of the fields. Plaintiff would provide that the coded
24 field names are "the names assigned to empty fields in (normally
25 hidden) markup language instructions (used to program a form) that
26 are used by the computer to keep track of data entered into the
27 fields." Plaintiff devotes considerable attention to arguing that
28 the field names (identifiers internal to the computer) are

1 different from the field labels (identifiers visible to the user),
2 but defendant does not dispute this. See, e g, Def Br (Doc #64) at
3 18:8-9, 17-19 ("Lextron and Microsoft generally agree that 'coded
4 field names' * * * are the names in the code that the computer uses
5 to access the data in the fields * * *. Field labels are the
6 visible text that identifies a field to a user on the screen.
7 Field labels are optional, field names are not (the computer needs
8 the field name to access the data in the field).").

9 The parties' dispute centers not on the basic meaning of
10 "coded field names," but rather on whether plaintiff's additional
11 limitations are appropriate. Defendant posits that plaintiff seeks
12 to limit its claims to HTML (hypertext markup language, the
13 standard language for web pages) "through the back door" with these
14 limitations. Id at 17:7-8. Plaintiff may not disagree that its
15 constructions limit the claims to HTML; in fact, it contends that
16 just such a limitation is appropriate in light of (1) the patent
17 title's reference to "Web Browsing on the Internet"; (2) the field-
18 of-invention reference to "the field of Internet World Wide Web
19 (WWW) browser technology"; (3) the references to web pages in the
20 specification; and (4) claim 4's reference to a "browser."

21 The trouble with plaintiff's argument is that it looks
22 everywhere but the language of the claims themselves. There is
23 nothing about "coded field names" that requires a limitation to a
24 particular code language. The patentee certainly might have added
25 such a limitation, but it does not appear in the claims as written.
26 Charitably read, plaintiff's references to the specification could
27 be an invocation of the principle that the patentee may act as his
28 own lexicographer by defining claim terms in the specification.

1 But even this argument would be unavailing: The term "coded field
2 names" does not appear anywhere outside of the claims, and "field
3 names" is used repeatedly throughout the specification without
4 explicit definition.

5 That said, plaintiff points out that the prosecution
6 history reflects an amendment that added "coded" before "field
7 names" to overcome a rejection of the claim as unpatentable over
8 United States Patent No 5,450,537 ("Hirai"). Hirai also teaches a
9 method and apparatus for filling in forms -- such as paper forms
10 scanned into a computer -- but operates based on the text labels of
11 fields, not an encoded field name. To overcome Hirai, the patentee
12 here added "coded." See Pl Br (Doc #43) Ex G at 9 (amendment). As
13 such, the court's construction must reflect this limitation.
14 Defendant's proposed construction "the names of the fields" gives
15 no content to "coded." Plaintiff's proposed construction can be
16 used in part to give content to "coded" by explaining that the
17 names are "in computer language."

18 Accordingly, the court construes "coded field names" as
19 "the names of the fields in computer language."
20

21 "downloaded"

22 The parties seem to dispute the construction of this
23 term: Plaintiff proposes "obtained" and defendant proposes
24 "received." The court sees no need to construe a term that has
25 entered the popular lexicon.

26 Accordingly, the court declines to construe this term.

27 /

28 /

1 "code"

2 The dispute over this term is largely resolved by the
3 court's construction of "coded field names": Plaintiff advocates
4 here, as it did with "coded field names," that the term should be
5 limited to a markup language (such as, but not limited to, HTML).
6 The court has rejected this contention. Defendant's construction -
7 - "representation of information" -- is not satisfactory, as it
8 strikes the court as unhelpfully vague and possibly misleading. In
9 any event, "code" may be sufficiently familiar (or immaterial) as
10 to require no construction.

11 Accordingly, the court declines to construe "code" at
12 this time. The parties may apply to the court for a construction
13 if it becomes necessary.

14
15 "Internet"

16 Plaintiff proposes to construe "Internet" as "the world
17 wide web." Although the patent's specification and title all
18 suggest that the invention is intended to apply to the world wide
19 web, there are at least two reasons to reject this construction.
20 First, it is well known that the world wide web exists by virtue of
21 servers connected to ("on") the Internet. Thus, the claim language
22 of "server on the Internet" is not at all inconsistent with
23 plaintiff's proposed construction. Second, "Internet" is
24 capitalized in the claim language, suggesting the proper noun;
25 whatever "internet" might mean, there is only one "Internet." (It
26 is because of this capitalization that defendant's proposed common-
27 noun construction -- "an inter-network of networks" -- is obviously
28 incorrect.) In any event, the court is confident that, like

1 "download," "Internet" has entered the popular lexicon and needs no
2 construction.

3 Accordingly, the court declines to construe "Internet."

4
5 "stored fill entities"

6 Insisting that the invention is directed toward filling
7 form fields, defendant proposes to construe this term as "stored
8 data to be placed in a form field." The court has rejected this
9 limitation. Plaintiff proposes to construe this term as "stored
10 data filled into fields in forms so that it is available for later
11 use." This construction appears to imply that the stored fill
12 entities are created in the first instance by (manual) completion
13 of the fields in a form. (Plaintiff elaborated at the hearing that
14 the manually filled-in forms would be forms from the Internet.)
15 The court must reject this construction as well.

16 Plaintiff's first argument in support of its construction
17 is that step (b) of claim 4 -- "storing the fill entities
18 associated with the tags in a memory of the computer" -- "clearly
19 refers to data that has been filled into a blank field in a form,
20 and thus it follows that the term 'stored fill entities' refers to
21 such data after it has been stored in a memory for later use." Pl
22 Br (Doc #43) at 17:1-3. The court is bewildered by this assertion;
23 step (b) says nothing about where the data comes from; step (b)
24 describes only what is done with the data.

25 Plaintiff's second argument is equally unavailing. The
26 specification provides that the invention described is "such that a
27 pipeline is established for quickly and efficiently filling fields
28 in forms." Patent at 1:49-50. Plaintiff argues that "[t]he

1 reference to 'pipeline' plainly conveys the idea that the data the
2 user has entered into fields in earlier forms is made available for
3 use in filling fields in later forms." Pl Br (Doc #43) at 17:18-
4 20. Whatever "pipeline" means, it certainly does not "plainly" say
5 anything about the existence of some otherwise-unmentioned
6 previously filled-in form. Previously filled-in forms may be a
7 suitable source of the stored fill entities, but the patent in no
8 way limits the source of the stored fill entities in such a way;
9 indeed, the claims place no limitation whatever on the source of
10 the stored fill entities.

11 A minimal construction can be salvaged from plaintiff's
12 proposal: "The plain wording of the claim language indicates that
13 'stored fill entities' are 'fill entities' that have been stored in
14 a memory of the computer for later use." Pl Br (Doc #43) at 16:21-
15 22. The court agrees.

16 Accordingly, the court construes "stored fill entities"
17 as "fill entities that have been stored in a memory of the computer
18 for later use."

19
20 "associated with"

21 This is the first instance of "associate," a word that is
22 used in one form or another three times in claim 1 and four times
23 in claim 4. Defendant argues that "associate" is used in different
24 senses in these seven different contexts, and as such requires
25 several different constructions. Plaintiff proposes that
26 "associated" means "related to" throughout the patent. This is the
27 most appropriate sense of the verb "associate" found in plaintiff's
28 dictionary reference. See Pl Br (Doc #43) Ex F (Webster's

1 Unabridged Dictionary) at 126 (defining "associate" as "to connect
2 or bring into relation"). While "related to" is hardly an
3 illuminating construction, that failing is more the product of the
4 patentee's repeated use of the vague and flexible (and perhaps even
5 indefinite) term "associate" than it is any failure on plaintiff's
6 part to propose a clean construction.

7 Defendant faces an uphill battle in challenging the
8 patentee's presumably intentional use of "associate" throughout the
9 claims:

10 "[T]he same terms appearing in different
11 portions of the claims should be given the same
12 meaning unless it is clear from the
13 specification and prosecution history that the
14 terms have different meanings at different
15 portions of the claims." Fin Control System
16 Pty, Ltd v OAM, Inc, 265 F3d 1311, 1318 (Fed
Cir 2001). If possible, th[e] court construes
claim terms "in a manner that renders the
patent internally consistent." Budde v
Harley-Davidson, Inc, 250 F3d 1369, 1379-80
(Fed Cir 2001).

17 Frank's Casing Crew & Rental Tools, Inc v Weatherford
18 International, Inc, 389 F3d 1370, 1377 (Fed Cir 2004). Though
19 there may be no danger here of internal inconsistency from
20 differential constructions of "associate," neither is there any
21 warrant in the intrinsic record for such differential
22 constructions.

23 Several of defendant's differential constructions of
24 "associate" appear to depend entirely on its contention that the
25 claims require filling in the fields in the form. See Def Br (Doc
26 #64) at 30:18-31:3 (arguing that "associates" at the end of claim 1
27 must mean "placing the data into the fields" because the claim
28 requires "placing the fill entity in the field"); id at 32:3-7

1 (same). The court has rejected defendant's premise; the claims do
2 not require placing the data into the fields, and there is no basis
3 to limit "associates" by holding that "associates retrieved fill
4 entities with fields" means no more than "places retrieved fill
5 entities in fields." Indeed, the patentee amended claim 1 to
6 change "places fill entities in fields" to "associates retrieved
7 fill entities with fields." See Def Br (Doc #64) Ex K (amendment)
8 at 2. In short, defendant cannot point to evidence to overcome the
9 presumption that the patentee has used "associate" in the same
10 (albeit vague) sense throughout the claims.

11 Accordingly, unilluminating as it may be, the court
12 construes "associated with" to mean "related to."

13
14 "tags"

15 A "tag" is an "identifier"; on this much the parties
16 agree. Defendant proposes "an identifier, such as an alphanumeric
17 field name, that identifies the fill entity." Plaintiff proposes
18 "an automatically generated identifier that is distinct from the
19 field name and is used for matching against coded field names."
20 Plaintiff's principal objection is that the example offered in
21 defendant's proposed construction -- "such as an alphanumeric field
22 name" -- is confusing in light of the usage of the claim term
23 "field name" elsewhere in the patent. The court agrees with
24 plaintiff in this respect, but otherwise adopts defendant's
25 proposed construction.

26 There are three further qualifications introduced by
27 plaintiff's proposed construction, each of which the court cannot
28 accept. First, plaintiff proposes a limitation that the tag be

1 "automatically generated." While as a practical matter, it may be
2 true that the computer (not the user) generates the tag, there is
3 no support for this in the claim or the specification. The court
4 declines to introduce such an unclaimed limitation. Second,
5 plaintiff reiterates that the tag is "distinct from the field
6 name." There is no need for this qualifier; it is clear from the
7 claim itself that tags and field names are different things.
8 Third, plaintiff would specify that the tag "is used for matching
9 against coded field names." This usage (or something akin to this
10 usage) is described elsewhere in the claim; the term "tag" itself
11 does not carry this meaning.

12 Accordingly, the court construes "tag" as "an identifier
13 that identifies the fill entity."

14
15 sequencing in the last part of claim 1

16 Defendants assert that the events described in the
17 "wherein" clause of claim 1 must occur in the sequence recited in
18 the claim. Plaintiff contends that no specific order is required.
19 Although claim 1 is not strictly a method claim, it recites steps,
20 so Federal Circuit precedent on methods is appropriately invoked
21 here:

22 "Unless the steps of a method actually recite
23 an order, the steps are not ordinarily
24 construed to require one. However, such a
25 result can ensue when the method steps
implicitly require that they be performed in
the order written."

26 Altris, Inc v Symantec Corp, 318 F3d 1363, 1369 (Fed Cir 2003)
27 (quoting Interactive Gift Express, Inc v Compuserve Inc, 256 F3d
28 1323, 1342-43 (Fed Cir 2001)).

1 The grammar of the steps here requires that they be
2 performed in the sequence written. It is helpful to rescribe the
3 relevant portion of claim 1, with the steps enumerated:

4 wherein the CPU, executing the control code,

5 [1] compares the coded field names in
6 the downloaded code with the tags
7 associated with the stored fill
8 entities,

9 [2] retrieves fill entities when a
10 match is made, and

11 [3] associates retrieved fill
12 entities with fields wherein the tags
13 match the field names,

14 preparatory to transmission to the server on
15 the Internet.

16 Patent at 5:19-25.

17 Step [2] contains an adverb "when" that implies some
18 temporal sequence; in particular, step [2] occurs only when (i e,
19 after) a "match is made." Step [1], which involves "compar[ing]"
20 is the only step that can be understood to produce a "match."
21 Hence, step [1] must occur before step [2].

22 Step [3] uses the past participle "retrieved" as an
23 adjective modifying "fill entities." The use of the past
24 participle implies that some action -- here, retrieving -- has
25 already taken place. Step [2] supplies that past action. Hence,
26 step [2] must occur before step [3].

27 In sum, the three steps must occur in the sequence
28 written. Plaintiff's principal objection is that the steps could
proceed in a different order in forms having multiple fields:

 For example, in a form having two fields named
 "first name" and "last name," the "compares"
 step could be performed for the "first name"

1 field, followed by the "retrieves" and the
2 "associates" steps. Next, the "compares" step
3 could be performed for the "last name" field,
followed by the "retrieves" and the
"associates" steps.

4 Pl Br (Doc #43) at 33:23-26. The court sees plaintiff's
5 hypothetical as a case of an embodiment that practices the
6 invention multiple times simultaneously or sequentially, not a case
7 of out-of-order execution of the recited steps. Even in
8 plaintiff's hypothetical, with respect to each practicing of the
9 invention -- comparing, retrieving and associating for the "first
10 name" field, and then doing so for the "last name" field -- the
11 steps are taken in the order recited in the claim.

12 Accordingly, the court concludes that the steps of the
13 "wherein" clause of claim 1 must occur in the sequence recited in
14 the claim.

15
16 "compares"

17 The proper construction of "compares" is bound up with
18 the proper construction of "match" because the logic of the steps
19 in claim 1 implies that the product of the "comparing" step is a
20 "match." Rather than separately construe these terms, the court
21 finds it more sensible to construe "compares" in terms of "matches"
22 and then to construe "matches" (see below). Plaintiff offers an
23 unobjectionable construction of "compares" that fits this scheme:
24 "compares" means "looks for potential matches."

25 Accordingly, the court construes "compares" as "looks for
26 potential matches."

27 /

28 /

1 "the coded field names in the downloaded code with the tags" (claim
2 1) and "the tags of the stored fill entities with coded field names
3 in the code of the downloaded form" (claim 4)

4 In these two terms, the parties dispute whether the
5 "comparing" (or in claim 4 "associating") step must be performed
6 with respect to all field names of the form. Plaintiff contends
7 that there is no basis in the claim language for a limitation of
8 "all field names" or "every field name" or "each field name." In
9 support, plaintiff cites Dayco Products, Inc v Total Containment,
10 Inc, 258 F3d 1317, 1325, 1327-28 (Fed Cir 2001), which holds that
11 "plurality" (as in "a plurality of objects") means "two or more."
12 Defendant argues that the use of the plural implies that all field
13 names must be processed (even if not all field names are ultimately
14 matched with a tag).

15 Dayco is not on point. In one respect, Dayco only
16 resolves a question of definition ("what does 'plurality' mean?"),
17 but the question here posed is one of syntax ("what does the use of
18 a plural noun signify?"). In another respect, Dayco concerns a
19 dispute over absolute quantities, specifically the minimum number
20 of "projections" the claim there required the patented hose
21 assembly to have. Here, the dispute is over partitive quantities,
22 specifically whether the claims read upon systems that process all
23 or merely some of the field names. That said, plaintiff's main
24 point still stands: The claims do not use "all," "each" or "every"
25 -- words that normally signify the meaning defendant would attach
26 to the claim term.

27 The court requested further briefing from the parties on
28 Federal Circuit precedent on the treatment of plural nouns.
Plaintiff points to several cases, but none treats the precise

1 question here; like Dayco, the cases define "plurality" or concern
2 absolute quantities, not partitive quantities. Defendant argues
3 that its construction is not based on the use of plural nouns as
4 much as it is on the claims as a whole. Based on the court's own
5 search, the parties may not be to blame for the paucity of cited
6 caselaw.

7 The specification tends to support defendant's position.
8 For example, in the summary of the invention, the patent speaks of
9 filling "all of the fields in the form." Patent at 2:15.
10 Similarly, a preferred embodiment functions to "fill[] all of the
11 fields for which a match is made[, which] may be all of the fields
12 in the form." Patent at 4:1-2. This implies that the invention
13 must operate on all fields in a form. But the fact that the
14 specification only describes filling all the fields of a form is
15 not dispositive; relying too heavily on the specification risks
16 importing limitations from the specification into claims that
17 contain no such limitation.

18 There may be something to defendant's suggestion that
19 "[i]t is not the plural nouns, but the claim language itself that
20 describes processing fields." Def Supp Br (Doc #72) at 4:10-11.
21 And indeed, the claim preambles put the processing of fields into
22 the necessary context: Claim 1 claims a "system for providing data
23 for fields" (which happen to be "in forms"), while claim 4 claims a
24 "method for providing data for forms" (which happen to "hav[e]
25 fields"). Compare Patent at 5:11-12 with Patent at 6:13-14. The
26 object of claim 1 is to provide data for fields; claim 1 mentions
27 forms only in its preamble and only to provide context by using the
28 generic plural "forms." By contrast, claim 4 is directed at

1 providing data for forms, and claim 4 refers to a form throughout.
2 While there is presumptively no basis in the use of a plural noun
3 for reading in "each" or "every," when that noun refers to a
4 component part of a larger entity (as fields are components of
5 forms) and the claim reads upon the larger entity, it is natural to
6 understand the plural to imply "each" or "every." In the case of
7 claim 1, the larger entity is but a sidelight. But in the case of
8 claim 4, the claim is concerned with providing data for forms and
9 one cannot provide data for a form without processing all its
10 constituent parts.

11 Accordingly, the court construes claim 1 as not requiring
12 comparing of all field names, but claim 4 as containing such a
13 requirement.

14
15 "retrieves"

16 The parties seem to dispute the construction of this
17 term: Plaintiff proposes "accesses" and defendant proposes "gets."
18 The term seems clear enough to the court without a construction.

19 Accordingly, the court declines to construe this term.
20

21 "fill entities"

22 The parties do not have a significant dispute over this
23 term: Plaintiff proposes "the fill entity associated with a tag"
24 and defendant proposes "the stored fill entity that the tag
25 identifies." Plaintiff's proposal uses "associated" and thus
26 better tracks the claim language.

27 Accordingly, the court construes "fill entities" as "the
28 fill entity associated with a tag."

1 "when a match is made"

2 As noted above, a "match" is the result of the
3 "comparing" step (or, in claim 4, step (d)). Plaintiff proposes
4 that a "when a match is made" means "when there is a suitable
5 association between a tag and a coded field name." Defendant
6 proposes a construction of "when the tag is identical to the field
7 name." Plaintiff bases its proposed construction on conventional
8 dictionary definitions. See Pl Br (Doc #43) at 27 (defining
9 "match" as "a pair suitably associated <carpet and curtains that
10 match>"). Defendant offers technical dictionary definitions from
11 the field of computer science. See Def Br (Doc #64) at 26
12 ("matching" is "the process of testing whether two data items are
13 identical"; "match" is "a condition in which the values of
14 corresponding components of two or more data items are equal").

15 There are two problems with plaintiff's proposed
16 construction. First, Markman holds that claim construction is a
17 question for the court. In context, construing "matching" as
18 "suitably associated" leaves it up to the jury to decide just what
19 "suitably" means. Second, the court finds plaintiff's proposed
20 dictionary definition inappropriate because "suitably" is used in
21 an aesthetic sense. Rather, defendant's proposed technical
22 dictionary definitions offer constructions appropriate to the field
23 of the invention. Both those definitions require an exact match --
24 an "identical" match, or one where "data items are equal." The
25 court adopts defendant's construction.

26 Accordingly, the court construes "when a match is made"
27 as "when the tag is identical to the field name."

28 /

1 "preparatory to"

2 Plaintiff contends that this term means only that the
3 recited procedures must be executed prior to submitting the form.
4 Defendant contends that the final step of the claim makes the form
5 ready to be submitted. Defendant's position seems to rest on its
6 contention that the claims require the filling in of form fields --
7 a result that would, indeed, appear to make the form ready to be
8 submitted. But the court has rejected this view of the claims.
9 Moreover, "preparatory to" suggests only that certain (identified)
10 steps must occur before an event; it does not exclude the
11 possibility that other (unidentified) steps might intervene between
12 the last identified step and the event. Plaintiff's construction
13 accurately captures this sense.

14 Accordingly, the court construes "preparatory to" to mean
15 that the procedures are executed prior to submitting the form.

16
17 sequencing of the steps of claim 4

18 Defendants assert that the events described in the
19 "wherein" clause of claim 1 must occur in the sequence recited in
20 the claim. Plaintiff contends that no specific order is required.
21 The court has cited the relevant Federal Circuit authority above in
22 analyzing the same question with respect to claim 1. The recited
23 steps of claim 4 are:

- 24 (a) associating fill entities with tags;
25 (b) storing the fill entities associated with
26 the tags in a memory of the computer;
27 (c) downloading a form as code from a server on
28 the Internet through a browser using the
 computer;

1 (d) associating the tags of the stored fill
2 entities with coded field names in the code of
the downloaded form; and

3 (e) causing the stored fill entities with tags
4 matching coded field names in the code of the
downloaded form to be associated with the coded
5 fields to which the tags match.

6 Patent at 6:16-30.

7 The past participle "associated" in step (b) refers back
8 to the present participle "associating" in step (a). Hence, step (b)
9 must come after step (a). Steps (a) and (c) are not dependent on
10 any previous event. The past participle "stored" in step (d)
11 refers back to the present participle "storing" in step (b).
12 Likewise, the past participle "downloaded" in step (d) refers back
13 to the present participle "downloading" in step (c). Hence, step
14 (d) must come after steps (b) and (c). Finally, step (e) must
15 follow step (d) because there is no way to associate fill entities
16 and fields until tags and field names have been associated.

17 Accordingly, the court concludes that steps (a), (b), (d)
18 and (e) must occur in that order; and that step (c) can occur at
19 any time before step (d).

20
21 "browser"

22 The parties list "browser" as a disputed term in their
23 joint claim construction statement, Doc #38 at 5, but do not brief
24 their dispute.

25 Accordingly, the court declines to construe "browser" at
26 this time. The parties may apply to the court for a construction
27 if necessary.

28 /

IV

In sum, the court has construed many of the disputed terms of the patent according to their plain language and by reference to the intrinsic record. In several instances, the court has declined to issue a construction but has invited the parties to apply for a construction if it becomes necessary. If the parties desire such further constructions, they should propose a schedule to the court for such further proceedings. As set at the hearing, the parties shall file dispositive motions to be heard on November 3, 2005, at 2:00 pm.

IT IS SO ORDERED.



VAUGHN R WALKER

United States District Chief Judge